

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33597

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 677
	)	
Plaintiff-Respondent,	)	Filed: October 21, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
CURTIS JAMES COCKERUM,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Order denying motion to withdraw guilty plea, affirmed.

Dennis A. Benjamin of Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Ann Wilkinson, Deputy Attorney General, Boise, for respondent.

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PERRY, Judge

Curtis James Cockerum appeals from the district court's order denying his motion to withdraw his guilty plea. For the reasons set forth below, we affirm.

Cockerum was arrested after he attempted to purchase cocaine and methamphetamine from an undercover police officer. Cockerum was charged with possession of a controlled substance. I.C. § 37-2732(c). Cockerum filed a motion to suppress, which the district court denied. Cockerum then entered a conditional guilty plea to the charge, and the state stipulated to recommend that he be released on his own recognizance prior to sentencing and that he would not be charged with a persistent violator enhancement. Several days prior to sentencing, the state filed a motion seeking a bench warrant for Cockerum's arrest because of concerns that he would not appear for sentencing based on information contained in his presentence investigation report (PSI). Following a hearing on the state's request, the district court granted the motion and Cockerum was taken into custody. The district court sentenced Cockerum to a unified term of

five years, with a minimum period of confinement of one year. Thereafter, Cockerum filed an I.C.R. 35 motion for reduction of sentence which the district court denied. Cockerum appealed. Eight months later, Cockerum filed a pro se I.C.R. 33 motion to withdraw his guilty plea, arguing that his plea was involuntary and that the state breached the agreement by filing a motion for a bench warrant prior to sentencing. After taking the Rule 33 motion under advisement, the district court denied the motion, reasoning that no manifest injustice would result were Cockerum not allowed to withdraw his plea. Cockerum pursues his appeal.

## II.

### ANALYSIS

Cockerum argues that the district court abused its discretion in denying his motion to withdraw his guilty plea because it failed to first consider whether his guilty plea was constitutionally valid before considering manifest injustice. Furthermore, Cockerum asserts that his plea was constitutionally invalid because the state later breached the plea agreement by requesting a bench warrant. Lastly, Cockerum argues that the district court abused its discretion in holding that no manifest injustice resulted from denying withdrawal of the plea when the agreement had been breached.

Whether to grant a motion to withdraw a guilty plea lies in the discretion of the district court and such discretion should be liberally applied. *State v. Freeman*, 110 Idaho 117, 121, 714 P.2d 86, 90 (Ct. App. 1986). Appellate review of the denial of a motion to withdraw a plea is limited to determining whether the district court exercised sound judicial discretion as distinguished from arbitrary action. *Id.* Also of importance is whether the motion to withdraw a plea is made before or after sentence is imposed. Idaho Criminal Rule 33(c) provides that a plea may be withdrawn after sentencing only to correct manifest injustice. The stricter standard after sentencing is justified to insure that the accused is not encouraged to plead guilty to test the weight of potential punishment and withdraw the plea if the sentence were unexpectedly severe. *Freeman*, 110 Idaho at 121, 714 P.2d at 90. Accordingly, in cases involving a motion to withdraw a plea after sentencing, appellate review is limited to reviewing the record and determining whether the trial court abused its sound discretion in determining that no manifest injustice would occur if the defendant was prohibited from withdrawing his or her plea. *State v. Lavy*, 121 Idaho 842, 844, 828 P.2d 871, 873 (1992).

It is well established that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. *Santobello v. New York*, 404 U.S. 257, 262 (1971). This principle is derived from the Due Process Clause and the fundamental rule that, to be valid, a guilty plea must be both voluntary and intelligent. *Mabry v. Johnson*, 467 U.S. 504, 508-09 (1984); *State v. Rutherford*, 107 Idaho 910, 913, 693 P.2d 1112, 1115 (Ct. App. 1985). If the prosecution has breached its promise given in a plea agreement, whether that breach was intentional or inadvertent, it cannot be said that the defendant's plea was knowing and voluntary, for the defendant has been led to plead guilty on a false premise. *State v. Jones*, 139 Idaho 299, 301-02, 77 P.3d 988, 990-91 (Ct. App. 2003). In such event, the defendant will be entitled to relief. *State v. Fuhrman*, 137 Idaho 741, 744, 52 P.3d 886, 889 (Ct. App. 2002). As a remedy, the court may order specific performance of the agreement or may permit the defendant to withdraw the guilty plea. *Santobello*, 404 U.S. at 263; *Jones*, 139 Idaho at 303, 77 P.3d at 991.

As part of the plea agreement in this case, the state stipulated that it would recommend that Cockerum be released on his own recognizance for the purpose of obtaining treatment prior to sentencing. Although the district court was not required to accept this condition, the state did make such a recommendation and the district court allowed Cockerum's release with the specific condition that he immediately obtain treatment. The state therefore satisfied the condition that it recommend Cockerum's release on his own recognizance. Later, based on information obtained from the PSI, namely that Cockerum had allegedly threatened the mother of his child that he was going to take the child and "get[] the hell out of there" and that she also believed he had been using drugs during his release, the state filed the motion for a bench warrant to ensure Cockerum's presence for sentencing.

Cockerum asserts that the state breached the plea agreement by requesting the bench warrant. We are unpersuaded. The plea agreement did not prohibit the state from taking this action. Cockerum contends that he had not actually fled the jurisdiction nor breached any obligation to appear in court. The state was not required to wait for Cockerum to disappear before filing the motion for a bench warrant. Moreover, because the state was not prohibited from taking such action, Cockerum's contention that he had honored the agreement is irrelevant. The filing of the motion for a bench warrant was not a breach and did not make Cockerum's plea unknowing or involuntary. Thus, it also would not cause manifest injustice were Cockerum not

allowed to withdraw his plea. Accordingly, the district court did not abuse its discretion in denying Cockerum's motion to withdraw his guilty plea post-sentencing.

Cockerum further contends that the district court erred by not first conducting an analysis of whether the plea was knowing and voluntary before concluding that manifest injustice would not result from denying his motion to withdraw it. As presented on appeal, Cockerum's contention rests upon his assertion that his plea was not constitutionally valid because the state breached the plea agreement. We have concluded that the state did not breach the plea agreement. Therefore, even assuming the sequence of the district court's analysis was incorrect, it is not reversible error. The district court's order denying Cockerum's motion to withdraw his guilty plea is affirmed.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**